SUPREME COURT, U.S.
FILED

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NO._____

THE SUPREME COURT OF THE UNITED STATES

In re Gary R. Wall, William Cooksey Sr., Stephen Manos,
Petitioners

v.

Robert M. Cheverie, Charles LeConche, Dominick Lopreato
Trustee, John Pezzente, Laborers' International Union of North
America, Vere O. Haynes, Robert D. Luskin, Michael S. Bearse
General Counsel LIUNA, Frank Freeman Laborers' Local 230
Respondents

On Petition For Writ Of Certiorari To The United States Court Of
Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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5788

Rule 14(1)(a) Questions

1. Did The Second Circuit's Panel of Hon. Chester J. Straub, Hon. Ralph K. Winter, Hon. Thomas J. Meskill SUMMARY ORDER AFFIRMING the district courts ruling – on Claim One 18 U.S.C. 1964(c) – granting Cheverie et al motion to dismiss with prejudice – granting defendant Luskin's motion to dismiss with prejudice for failure to state a claim pursuant to F.R.C.P. 12(b)(6). Conflict with United States Supreme Court decisions Sedima –v- Imrex 473 U.S. 479, United States v. Turkette 453 U. S. 576 – regarding the statutory construction of the "enterprise" [18 USC 1961(4)] element of the Racketeering Influenced and Corrupt Organization Act. In spite of the fact that the plaintiffs pleaded "enterprise racketeering injuries"

2. Did the Second Circuit's panel of Hon. Chester J. Straub, Hon. Ralph K. Winter, Hon. Thomas J. Meskill SUMMARY ORDER AFFIRMING the district court's ruling – on Claim One 18 USC 1964(c) – granting Cheverie et al motion to dismiss with prejudice – granting

defendant Luskin's motion to dismiss with prejudice, for failure to state a claim pursuant to F.R.C.P. 12(b)(6) – sanctioned a departure from the accepted course of judicial proceedings, by being in direct conflict with the following case authorities of the Second Circuit regarding the "enterprise" and "pattern" requirements of Racketeering Influenced and Corrupt Organization Act as to call for the exercise of The United States Supreme Court's supervisory power. Case Authorities: United States –v- Indelicato En Banc 865 Fed. Rep. 2d 1370, United States –v- Ianniello 808 F. 2d 184 (2d Cir), United States –v- Weisman 624 F. 2d 1118 (2d Cir.) United States –v- International Teamsters 708 F. Supp. 1388 (S.D.N.Y. 1989).

3. Did the Second Circuit's panel of Hon. Chester J. Straub, Hon. Ralph K. Winter, Hon. Thomas J. Meskill, SUMMARY ORDER AFFIRMING, the district court's ruling – on Claim One – 18 USC 1964(c)-granting Cheverie et al motion to dismiss with prejudice – granting defendant Luskin's motion to dismiss with prejudice, for

failure to state a claim pursuant to F.R.C.P. 12(b)(6) – conflict with the decision of The United States Court of Appeals for the 3rd Circuit in United States –v- Local 560 780 Fed. Rep. 267 (3rd Cir. 1985) on the same important matter, application of 18 U.S.C. 2, as a predicate act violation of Racketeering Influenced and Corrupt Organization Act.

4. Did the Second Circuit's panel of Hon. Chester J. Straub, Hon. Ralph K. Winter, Hon. Thomas J. Meskill SUMMARY ORDER – AFFIRMING the district court's ruling on Claim One 18 U.S.C. 1964(c) –granting Cheverie et al motion to dismiss with prejudice – granting defendant Luskin's motion to dismiss with prejudice for failure to state a claim pursuant to F.R.C.P. 12(b)(6) violate the plaintiffs statutory rights under 18 U.S.C. 1964(c) that: 18 U.S.C. 1959 –"may not be considered in support of plaintiffs cause of action"---as a RICO predicate – and in so doing also conflict with its [the 2d Cir's] own finding in U.S. –v- Concepcion 983 F. 2d 369 (2d Cir. 1992).

///

5. Did the Second Circuit's panel of Hon. Chester J. Straub, Hon. Ralph K. Winter, Hon. Thomas J. Meskill SUMMARY ORDER AFFIRMING the district court ruling violate the plaintiffs statutory rights by sanctioning that: 29 U.S.C. 530 (deprivation of union rights by violence) ---"may not be considered in support of plaintiffs cause of action"—as a RICO predicate, sanction a pattern of intentional erroneous interpretations of the statutory construction of a RICO claim by the district court.

6. Did the Second Circuit's panel of Hon. Chester J. Straub, Hon. Ralph K. Winter, Hon. Thomas J. Meskill, engage in conduct prejudicial to the effective administration of Justice.

By protecting Hon. Janet C. Hall's [U.S.D.J.] flagrant misrepresentation of [documented] facts that supported predicate violations of Racketeering Influenced and Corrupt Organizations Act.

By protecting the [documented] intentional misidentification of a timely Rule 59(e) motion, as a Rule 59(a) – Rule 59 (b) Motion

By protecting Hon. Janet C. Hall from the [documented] intentional concealment and then intentional misidentification of a Rule 60(b)(6) Motion

By denying the plaintiffs their applicatory right to the "any person" clause of 18 U.S.C. 1964(c) in spite of the quantity and quality of evidence presented at F.R.C.P. 12(b)(6) level showing the graverman of this case extortion 18 U.S.C. 1951 [Hobbs Act] of the plaintiffs LMRDA Rights [29 U.S.C. 401 et seq.] through "Enterprise Racketeering Injuries" by an effective date [Oct. 15, 1970] RICO enterprise and in so doing did the 2d Cir. panel violate their oath of office to "administer justice without respect to persons" and to "faithfully and impartially discharge and perform all --- duties incumbent upon [them]--- under the constitution and laws of The United States" 28 U.SC. 453

IN COMPLIANCE WITH SUP. CT. RULE 14(1)(a) NO OTHER INFORMATION WILL APPEAR ON THIS PAGE

V

SUP. CT. RULE 14(b)

1. Respondent Robert D. Luskin – General Executive Board Attorney Laborers' International Union/In-House prosecutor per signed agreement with the Department of Justice.

2. Respondent Vere O. Haynes – First Vice President Laborers' International Union – Signatory "Operational Agreement" with the Department of Justice.

3. Respondent Michael S. Bearse – General Counsel Laborers' International Union.

4. Respondent Laborers' Local 230 "Legal Entity" "Corporation" 18 U.S.C. 1961(3) and an "enterprise" 18 U.S.C. 1961(4).

5. Respondent Laborers' International Union of North America a "Legal Entity" "Corporation" 18 U.S.C. 1961(3) and an "enterprise" 18 U.S.C. 1961(4).

6. Respondent Dominick Lopreato Business Manager Local 230 at pertinent times in the complaint.

7. Respondent John Pezzente Officer Local 230.

8. Respondent Charles LeConche presently Business Manager Local 230.

9. Respondent Robert M. Cheverie General Counsel Local 230.

10. Respondent Harriet Roman Secretary/Dispatcher Local 230 withdrawn from case by petitioners, at the district level.

11. Respondent Frank Freeman at relevant times, Sargent At Arms/Vice President Local 230.

12. The Enterprise 18 U.S.C. 1961(4) October 15, 1970 to February 13, 1995 pleaded as the Coia/Lopreato Group – February 13, 1995 to present day pleaded as the Luskin/Coia/Lopreato Group.

CITED WRONGDOERS

Wrongdoer One Executive Board Local 230, **Wrongdoer Two** Peter F. Vaira Independent Hearing Officer, **Wrongdoer Three** W. Douglas Gow L.I.U.N.A. Inspector General **Wrongdoer Four** Arthur E. Coia, General President L.I.U.N.A, **Wrongdoer Five** Paul E. Coffey, Chief O.C.R.S. Criminal Division Department of

Justice, **Wrongdoer Six** Ms. Janet Reno, Attorney General of The United States.

Sup. CT. Rule 14(c)

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Sup. CT. Rule 14(d)

Judgment Entered July 14, 2000

"This matter came on before the Honorable Janet C. Hall, United States District Judge, as a result of defendants' motion to dismiss.

The Court has reviewed all of the papers filed in conjunction with the motion and heard oral argument on July 12, 2000, a ruling on pending motions entered granting the defendants' Cheverie, et al motion to dismiss with prejudice and granting defendant Luskin's motion to dismiss with prejudice except that it is without prejudice as to the due process claim only.

Therefore, it is ORDERED and ADJUDGED that judgment is entered for the defendants and the case is closed dated at Bridgeport, Connecticut, this 14th day of July, 2000."

SUMMARY ORDER dated September 6, 2001 page No. 2

"The facts giving rise to this action are described in this Court's opinion in Wall v. Construction & General Laborers' Union, Local 230, 224 F. 3d 168 (2d Cir). 2000)"

SUP. CT. RULE 14(e)

Jurisdiction pursuant to 28 U.S.C. 1651 (a) is in aid of this Court's Appellate jurisdiction.

SUP. CT. RULE 14(e)(i) September 6, 2001

SUP. CT. RULE 14(e)(ii) November 15, 2001

SUP. CT. RULE 14(e)(iii) NA

SUP. CT. RULE 14(f)

18 U.S.C. 1964(c), 18 U.S.C. 1962(b)(c)(d), 18 U.S.C. 1961(1)(5), 18 U.S.C. 1951, 18 U.S.C.1951(b)(2), 18 U.S.C. 1341, 18 U.S.C. 1343, 18 U.S.C. 2, 18 U.S.C. 1512, 29 U.S.C. 411, 29 U.S.C. 401, 29 U.S.C. 530, 29 U.S.C. 501, 18 U.S.C. 1959 In the Control and Maintenance of 18 U.S.C. 1961(4).

Sup. CT. Rule 14(g)

As stated in the Second Circuits' panels SUMMARY ORDER "The facts giving rise to this action are described in this Court's opinion in Wall –v- Construction & General Laborers' Union Local 230 224 F. 3d 168 (2d Cir). 2000)" [depositions are presently being taken in Wall v. Local 230 Supra pro se in the Federal Court House Hartford, Connecticut]. This RICO action occurred off of Wall Supra first in the form of an injunction –

District Court Case No. 3:97-CV-02502(JCH) D.C. Dkt. #1, 3, 4, 5 – because of the [documented on tape] violent assault and extortionate tactics committed against an affiant [Stephen Manos] at that time in Wall Supra. Affiant Stephen Manos was not a plaintiff in the RICO complaint or the Civil Rights Complaint at the time. The injunction was also filed because my attorney at the time stated he was concerned for his physical safety in Wall Supra [Raised on the record] and it was also filed to stay my pension before it expired December 31, 1997 or to stay the tolling of the ERISA Statute because of the perjurious affidavits and declaration filed in Wall Supra. The district denied the injunction but allowed the plaintiffs to file a RICO Standing Order D.C. Dkt. #37 and supplement to Standing Order D.C.Dkt. #52. The district court approximately one year later in D.C. Dkt. #97 dismisses the RICO Standing Order, in so doing, the district court does not print the word "enterprise" even once in spite of the fact that "enterprise racketeering injuries" are pleaded throughout.

The petitioners are aware of this Courts Holding

#2 In Sedima –v- Imrex 473 U. S. 479

"2. Nor is there any requirement that in order to maintain a private action under 1964(c) the plaintiffs must establish a "racketeering injury" not merely an injury resulting from the predicate acts themselves"---

The petitioners chose the higher pleading requirement of "enterprise racketeering injuries" not to restrict themselves – but because the predicate acts that harmed the petitioners were acts committed in the circumstances delineated in 1962(b)(c)(d)---" in the conduct of such enterprise affairs"---"an activity which RICO was designed to deter".

It is a fact that when RICO was drafted October 15, 1970 the "governance structure"[terminology used by President Regan's Crime Commission] of LIUNA was an objective target not a subjective target. That "governance structure" has remained the same pursuant to the "Operational Agreement" with the Department of Justice and where some of the "Hierarchical" "Associates In Fact" have died or retired their sons have replaced them. At the direction of lead hierarchical defendant/Respondent Robert D. Luskin in violation of 18 U.S.C. 1962(c) and (d) and has also facilitated multiple predicate crimes in violation of 18 U.S.C.

2. Also corresponding with the district courts intentional avoidance of "enterprise" in its' first dismissal of the Standing Order D.C.Dkt. #97 the district court also never prints the word facilitating or address the facilitating, averments pleaded throughout the RICO Standing Order D.C. Dkt. #37 and 52. When this fact was also raised in petitioners 2d Amended Complaint the district court in its ruling dated July 12, 2000 [Subject of Appeal In Second Circuit] the district court now states:

> ---"The plaintiffs additionally cite 18 U.S.C. 2 (aiding and abetting liability)--- "However, none of these are included as "predicate acts" under Civil RICO statute, and therefore may not be considered in support of plaintiffs' cause of action [see pleading under Sup. CT. Rule 14(h)]".

When the petitioners refuse to change their pleading position in their "Repleading of 2d Amended Complaint" the district court then in its July 12, 2000 Ruling [subject of appeal in Second Circuit] address the "enterprise" element by stating the petitioners did not meet the pattern requirement.

Stating: --"If they have, the court would then further consider the nature of the enterprise as the plaintiffs suggest. If they have not

reach the "enterprise" issue and must dismiss the plaintiff's complaint for failure to state a claim".

In spite of the fact that the district courts statement is a misconstruction of Title IX (OCCA) RICO [see pleading under Sup. CT. rule 14(h)] the petitioners showed clearly with documents the acquisition by fraud of Local 230 by LIUNA stated with particularity under Rule 9(b) F.R.C.P. – i.e. Fraudulent LM 2, LM 15, LM 15A, 16 Trusteeship Reporting forms. Three of the Respondent/defendants were involved in that acquisition by fraud. in or about the effective date of RICO October 15, 1970. All Arthur A. Coia and Arthur E. Coia "Associates in Fact". The cause of the unprecedented corruption that has occurred against the petitioners by the defendants and the courts below is the corrupt political, and corrupt financial influence of the Democratic National Committee by which a 3.1 million dollar donation by Arthur A. Coia which bought out a 212 page RICO complaint. [see petition for an extraordinary writ filed this same day]. And, in doing so, the 3.1 million allowed respondent Robert D. Luskin to criminally devise the "Operational Agreement" not only to stop Arthur A. Coia from being indicted but also it was in full effect for

5 years – that was a purposeful time period in order to protect his client from the last predicate act rule of R.I.C.O. [tolling 5 years]

The effect of the stated cause the[Operational Agreement] is the "Enterprise Racketeering Injuries" to the petitioners, by an "enterprise" of this "nature". The effect on the judicial system is the obstruction of the entire system.

In pleading against the "Operational Agreement" the petitioners were aware of this courts rejection in H. J. Inc. v. North Western Bell 492 U.S. 229 of the Eighth Circuit's multi scheme test, as being to restrictive on the plaintiff or prosecutor – nevertheless the petitioners chose the higher pleading requirement to plead against the "Operational Agreement" inter alia – as one of four multi scheme test.

"Scheme #1" was pleading in the re-pleading of the Second Amended Complaint and titled:

"The Operational Agreement" Scheme in the Meaning of 18 U.S.C. 1962(d)(c)(b) Violating 18 U.S.C. 1961(1)(5)"

None of the "Racketeering Schemes" were addressed by the courts below, as were none of the 15 Affidavits filed by or on

behalf of the plaintiffs, in spite of the actual serious violence and threats of serious violence swore by multiple affiants in this matter.

It is a shame that the "facts material to consideration of the questions presented" in compliance with Sup. CT. Rule 14(g) is a "Racketeering Scheme" in the meaning of 18 U.S.C. 1962(d), that being; The [Operational Agreement] that has caused the entire democratic system of laws and the enforcement of laws in the United States to fail – from the perjurious testimony by respondent Robert D. Luskin – before Senator William McCollum subcommittee on Crime July 25, 1996 [relevant parts entered in the district court and the second circuit] to the failure of the Federal Bureau of Investigation, the Attorney Generals Office and the courts below. Also on July 25, 1996, Paul E. Coffey being questioned by Congressman McCollum's Subcommittee on Crime in his capacity as Chief Organized Crime and Racketeering Section Criminal Division U. S. Department of Justice stated when asked why the 212 page RICO complaint was dropped – Mr. Coffey stated"

"WE NEVER HAD A UNION THAT SAID, WE'LL TAKE ON THE MOB BEFORE YOU FILE"

That absurd statement was referring to Arthur A. Coia and his "associates in fact" that they would take on the mob. In addition, in order to show the deliberate disregard for the Rule of Law by respondent Luskin (and the D.O.J), in or about April 1995 Washington, D. C., when questioned by the Hon. District Court Judge Emmett G. Sullivan, when asked by Judge Sullivan "Here's a man the President of the union, who's accused of being associated with Organized Crime, the focus of a 212 page complaint why wasn't Coia removed?" Respondent Luskin responded stating that the draft complaint was more of a "bargaining tool" for the government to initiate talks than an accurate depiction of the union and Coia. The illegality here on the part of respondent Luskin and the D.O.J. is a violation of the principles of federal prosecution. See: United States Attorney's Manual Chapter 110-9-110. 401 Page 5 "Inclusion of a RICO count in an indictment solely or even primarily to create a bargaining tool for later plea negotiations on lesser counts would not be appropriate and would violate the principles of federal prosecution." This petitioners believes that Arthur A. Coia is and has been for many years a "Top Echelon Informant" who in

concert with his "associates in fact" "enterprise" has been allowed to commit a multitude of racketeering crimes [documented looted Local 230 and its funds three (3) times for millions). This petitioner believes that this blanket immunity in the meaning of United States v. Carter 454 F. 2d 426 (which also blankets Coia's associates in fact conspirators) extends into the District of Connecticut and nationally pursuant to the "Operational Agreement". What is of exceptional importance here is for this court to not allow RICO to be beat like this, and to stop the last effective date (10/15/70) RICO enterprise (18 U.S.C. 1961(4)) and set an example and never allow another "Operational Agreement" to exist or have anyone corruptly use Title IX of the Organized Crime Control Act 1970 – no matter who they are and what their credentials are.

Sup. CT. Rule 14(g)(ii) "Any Person" clause 18 U.S.C. 1964(c)

Sup. CT. Rule 14(h)

The petitioners concise argument amplifying the reasons relied on for allowance of the Writ in conjunction with Sup. CT. Rule 10(a) must start with three conditions in this case that were avoided by the courts below – they are (1) an "Enterprise" [18 U.

S.C. 1961(4)] (Effective Date and Nature of) (2) an "Enterprise Conspiracy" [18 U.S.C. 1962(d)] (3) the pleading of "Enterprise Racketeering Injuries" [18 U.S.C. 1961(1)(B) 1961(1)(C), 18 U.S.C. 1961(5)].

What is of great importance to the petitioners by proximate harm regarding the three enterprise conditions, and what is of great importance to the United States regarding the three enterprise conditions is the same, explained in the following.

One of the primary reasons for the drafting of RICO was to bridge the statutory case authority wall, between trade unions and pension funds and other funds created as quasi racketeering schemes by the trade unions. In depositions just taken January 2002, in Wall Supra 3:97 CV09402(JCH), we have bridged the statutory case authority wall, by clear documented proof of a "wheel" and "chain" criminal conspiracy between the union and the pension fund, stealing our pension money as individuals. This is what subsection 1962(d) was written for. – "highly diverse crimes". And this is the reason the petitioners chose the higher pleading level at F.R.C.P. 12(b)(6) of "Enterprise Racketeering Injuries" because all of the petitioners were harmed in different but

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like ways in the meaning of "Relationship" and "Continuity" by an ENTERPRISE CONSPIRACY (effective date October 15, 1970) – (proximate harm to petitioners Wall & Cooksey Sr in or about 1986 to present day – proximate harm to petitioner Manos in or about 1995 to present day).

This petitioner believes that the United States Court of Appeal Fifth Circuit sitting En Banc has best defined the RICO element of "enterprise conspiracy" in U.S. –v- Elliott 571 Fed. Rep. 2d 880 at 902.

> "---against this background, we are convinced that, through RICO, Congress intended to authorize the single prosecution of a multi-faceted conspiracy by replacing the inadequate "wheel" and "chain" rational with a new statutory concept: The Enterprise".
>
> "[9-11] To achieve this result, Congress acted against the back drop of horn book conspiracy law, under the general federal conspiracy statute---/---in the context of organized crime, this principle inhibited mass prosecutions because a single agreement or "common objective" cannot be inferred from the commission of highly diverse crimes by

apparently unrelated individuals. RICO helps to eliminate this problem by creating a substantive offense which ties together these diverse parties and crimes. Thus the object of a RICO conspiracy is to violate a substantive RICO provision-here, to conduct or participate in the affairs of an enterprise through a pattern of racketeering activity – and not merely to commit each of the predicate crimes necessary to demonstrate a pattern of racketeering activity"---

Argument in Support of Question No. (1)

The argument regarding the erroneous statutory construction of the enterprise element of RICO by the district court, affirmed by Summary Order, by the Second Circuit is in conflict with this court's instructions and guidance stated in, Sedima –v- Imrex 473 U.S. 479, United States v. Tukette 453 U. S. 576

First shown is the district Court's erroneous interpretation of the statutory construction of the enterprise element at 6 footnote 2 of the district court's ruling – entry date July 12, 2000 – attachment #15 in the Appellate Court – quoted in its relevant parts.

"The district court: "The plaintiffs contend that this court erred in failing to discuss the nature of the "enterprise" alleged by the plaintiffs in its prior ruling dated July 29, 1999 Dkt. No. 97"---"The court understands the defendants argument to be that even if the court were to assume that such an enterprise did exist, the plaintiffs have nevertheless failed to meet other requirements of alleging a cause of action under RICO – specifically, the defendants argue the plaintiffs have not alleged a pattern of racketeering activity. Because allegations of a pattern of racketeering activity are a required part of RICO action based on 18 U.S.C. 1962(b), (c), and (d) the court must examine whether the plaintiffs have alleged sufficient facts to meet this requirement. If they have, the court would then further consider the nature of the enterprise as the plaintiffs suggest. If they have not reach the "enterprise issue and must dismiss the plaintiffs' complaint for failure to state a claim".

See Now: Sedima –v- Imrex 473 U. S. 479 ID. 496 showing the sequence of statutory construction of a violation of Section 1962(c)

"a violation of 1962(c) the section on which Sedima relies requires (1)conduct (2)of an enterprise (3)through a pattern (4)of racketeering activity."

Next showing is the district courts erroneous interpretation of the statutory construction of the enterprise element in conflict with Turkette Supra At 27 of district Courts Ruling – entry date July 12, 2000 – Attachment #15 in the Appellate Court – Affirmed by Summary Order – quoted in its relevant part.

The district Court: ---"Although the plaintiffs pleadings provide a lengthy background on corruption in Local 230 dating back to 1970, nothing in the pleadings serves to connect such events to the events they claim are "predicate acts". Other than general allegations that Local 230 has been under control of Arthur Coia and his cohorts, nothing connects the defendants alleged predicate acts to one another or the alleged Coia "machine" other than the mere fact that each of the defendants is an employee or member of Local 230 and thus, are alleged to have been committing their wide –ranging acts in order to maintain the alleged "enterprise"---

Now see the Turkette Court's instructions and guidance At 453 U. S. 576 Id. 583

---"In order to secure a conviction under RICO the government must prove both the existence of an "enterprise" and the connected "pattern of racketeering activity." The enterprise is an entity for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct. The pattern of racketeering activity is on the other hand, a series of criminal acts as defined by the statute 18 U.S.C. 1961(1) (1976 Ed Supp. 111). The former is proved by evidence that the various associates function as a continuing unit. The latter is proved by evidence of the requisite number of acts of racketeering committed by the participants in the enterprise. While the proof of one does not necessarily establish the other. The "enterprise" is not the "pattern of racketeering activity," It is an entity separate and apart from the pattern of activity in which it engages. The existence of an enterprise at all times remains a separate element which must be proved by the government."

Relevant background re: "Enterprise" element: The district court in first dismissing the "Standing Order" D. C. Dkt. #37 Appellate Court Attachment #5 and in dismissing the supplemental filing to the "Standing Order" D. C. Dkt. #52, Appellate Attachment #6, never even prints the word "enterprise" in its first ruling D. C. Dkt. #97.

When the petitioners raised that argument in their "Second Amended Complaint" D. C. Dkt. #99 Appellate Attachment #9, #10 and #11 – the subject complaint of the appeal to the Second Circuit, and this writ – the district court then refuses to "reach" the enterprise issue or "consider" the "nature of the enterprise". In direct conflict with Sedima Supra and Turkette Supra

Argument In Support of Question #2

The argument regarding the erroneous statutory construction of the enterprise element of RICO by the district court (See first quote in first argument) affirmed by Summary Order by the Second Circuit is also in conflict with the following case authorities of the Second Circuit regarding the statutory construction and relationship of the "enterprise" and "pattern" requirements of Title IX RICO they are:

U.S. –v- Indelicato 865 Fed. Rep. 2d 1370 2d Cir. En Banc Citing U. S. –v- Weisman 624 F. 2d 1118 2d Cir.

"The "enterprise" itself supplies a significant unifying link between the various predicate acts specified in Section 1961(1) that may constitute a RICO pattern."

See also: Indelicato En Banc Finding 7 Id. 1370

"Relatedness and continuity necessary to show RICO "pattern" may, in appropriate cases be established through nature of RICO enterprise 18 U.S.C. 1961(1,4,5,)"

See also: Indelicato En Banc Finding #9 Id. 1370

"Evidence of nature of RICO enterprise maybe used to show threat of continuity sufficient to establish RICO pattern 18 U.S.C. 1961 (1,4, 5)"

See also: United States –v- Ianniello 808 F. 2d 184 ID. 191 (2d Cir)

"---While recognizing that an inquiry must be made as to "relatedness" and "continuity" we concluded that these concepts did not affect the existence of pattern but were best addressed in the context of the concept of "enterprise"

See also: in Second Circuits jurisdiction (S.D.N.Y.) important Labor Racketeering Case U. S. –v- I.B.T. 708 F. Supp. 1388 at 1405

> "A RICO claim requires proof of (1)an enterprise, and (2)either participation in the enterprise or the acquisition or maintenance of an interest or control of the enterprise through a pattern of racketeering"

Argument in Support of Question #3

The district courts ruling entry date July 12, 2000, Appellate Attachment #15 At 8 affirmed by Summary Order of the Second Circuit is in error and in conflict with the 3rd Circuit regarding application of 18 U.S.C. 2 to Title IX RICO

> District Court: "The plaintiffs additionally cite 18 U.S.C. 2 (aiding and abetting liability):"---
>
> "However, none of these are included as "predicate acts" under Civil RICO statute, and therefore, may not be considered in support of plaintiffs cause of action".

See Now the Third Circuit in United States –v- Local 560, 780 F. 2d 267 Finding #9 At 269

"Criminal standard for aiding and abetting applied to charge in civil Racketeering Influenced and Corrupt Organization Act [18 U.S.C.A. 1961 et seq] suit that unions executive board aided and abetted other defendants extortionate acts 18 U.S.C.A. 2, 1962"

See Also Footnote #25 AT 288 560 Supra

"We conclude that under RICO, an individual need not himself commit two requisite predicate offenses as long as that same individual aids and abets the commission of the predicate offenses. Indeed, there is no authority to suggest that 18 U.S.C. 2(a) does not apply to RICO. Under 18 U.S.C. 2(a) whoever "aids, abets, counsels, commands, induces, or procures [the commission of an offense against the United States] is punishable as a principal"

18 U.S.C. 2 is averted inter alia against respondent Robert D. Luskin in his capacity as G.E.B. attorney and "In House Prosecutor" per signed agreement with the Department of Justice multiple times. 18 U.S.C. 2 is also averted multiple times against respondent Vere O. Haynes in his capacity as 1st V. P. LIUNA and

signatory to the "Operational Agreement" with the Department of Justice.

Argument In Support of Question #4

Also in the district court's ruling entry date July 12, 2000 Appellate Attachment #15 At 8 affirmed by Summary Order of the Second Circuit. The district stated in error and in conflict with the Second Circuit's decision in U. S. –v- Concepcion 983 F. 2d 369 (2d Cir. 1992) that:

> "---18 U. S.C. 1959 (commission of violent crimes in furtherance of racketeering activity"-- ---"However, none of these are included as "predicate acts" under civil RICO statute, and therefore may not be considered in support of plaintiffs cause of action."

See now U. S. –v- Concepcion 983 F. 2d 369 (2d Cir. 1992) Holding #14 At 380

> "[14]Section 1959, which was enacted to complement RICO see generally S. Rep. No. 225 98th Cong., 1st Sess. 304-07 (1983) ("S.Rep. No. 225") reprinted in 1984 U. S. Code"---

Argument In Support of Question #5

The district court also rejected in the same ruling affirmed by Summary Order of the Second Circuit that 29 U.S.C. 530 may not be considered in support of RICO action.

> District Court: ---"29 U.S.C. 530 (deprivation of union rights by violence or threat of violence)"---
>
> "However, none of these are included as "predicate acts" under civil RICO statute, and therefore may not be considered in support of plaintiffs cause of action".

The district court makes that finding and the Circuit affirms because 29 USC 530 is not illustrated in either subsection 1961(1)(B) or Subsection 1961(1)(C) – on close analysis the court will see the difference between 1961(1)(B) and 1961(1)(C) – 1961(1)(B) states "any act which is indictable under any of the following provisions of Title 18 U. S. Code" and then Congress illustrates their following provisions. 1961(1)(C) is different it states "any act which is indictable under Title 29 U.S. Code" and then Congress makes two examples. It does not state under the "following provisions" The Congressional statement "any act which is indictable under Title 29 U.S. Code" is the key phrase.

Now see to show that 29 U.S.C. 530 is an indictable offense see U. S. –v- Agone 302 Fed. Supp. 1258 Southern District of New York 1969 Pre-RICO quote at 1258 "The one count indictment in this case says" - "Laid under 29 U.S.C. 530 and 411(a)(2)" Indictment dismissed for other reason U. S. Attorney did not name the victim.

It is contrary to common sense that Congress would exclude an actual assault in "deprivation of Union Rights" [29 USC 530] and only take aim at the threat of an assault [18 USC 1951 – Hobbs Act] as a RICO predicate. That determination would also be contrary to the finding in this court in Turkettee Supra and in Russello –v- United States 464 U. S. 16 the "declared purpose" of Congress in enacting the RICO statute – "To seek the eradication of organized crime in the United States"

Argument in Support of Question #6

The petitioners start their argument with a facial showing clarifying the incorrect and intentional mischaracterization of the facts and the intentional statutory mischaracterization of the pleadings by the district Court that directly effected the Circuit Panel's decision. Shown how; in its relevant quoted parts, the

Circuit Panel's Findings on page 4 of their Summary Order [entire Summary Order printed verbatim and entered in Appendix (i)(i)]

4th paragraph page 4 of Summary Order

> "Further the district court was correct in denying the plaintiffs' motion to set aside the judgment. To the extent that the plaintiffs' motion was brought pursuant to Rule 59(a) reliance on this section was improper, as the section permits a motion for a new trial and, here, there was no trial. To the extent that the plaintiffs sought to alter or amend the judgment pursuant to Rule 59(b), the motion, if applicable, was untimely because it was filed more than ten day after the entry of judgment. Finally, to the extent that the plaintiffs sought to set aside the judgment pursuant to Rule 60, there is no merit to their motion".

In reply first regarding Rule 59(a) & 59(b) – **there were no motions brought to set aside the judgment pursuant to Rule 59(a) or Rule 59(b)**, that is obviously ridiculous [at 12(b)(6) Level] nor are there any motions identified as such in the Dkts. There was a timely Rule 59(e) Motion – D.C.Dkt.#164 dated and filed July 24, 2000 (Attachment#16 in Circuit appeal) Titled:

"Plaintiffs Memorandum of Law in Support of their Motion for Reconsideration of Courts Ruling [Entry date July 14, 2000]" Attorney Reed [for respondent Luskin] in his memorandum in "Opposition to plaintiffs Motion for Reconsideration" identified the motion he is opposing as a "timely" "Fed. R. Civ. P. 59(e)" motion. The timely 59(e) motion was brought under the standard of (3) the need to correct multiple errors of law and to prevent manifest injustice. The Rule 59(e) motion shows more than any other docket, the multiple acts of intentional mischaracterization of facts and intentional erroneous interpretation and application of the law by the district court. It is hard to believe that circuit judges would commit such a shameful, deceptive act, crucial to the petitioners "standing" and "relief". I hope the fault of the intentional deception is that of a law clerk who should not be a law clerk.

Next in response to the last sentence of paragraph #4 (just quoted) of the circuits Summary Order regarding Rule 60.

First see copy of letter in Appendix under (i)(vi)

The "index" was never updated and I was never informed that the Circuit had a copy of the 60(b)(6) motion until the circuit Ruled –

and as I mentioned to the panel in our petition for rehearing---" it is very careless of the panel to wrongly cite a Rule 60(b)(6) motion generalized as a Rule 60 motion"---

Quote title of 60(b)(6) motion and substantive claim of motion

"Plaintiffs' Memorandum In Support of rule 60(b)(6) Motion For Relief From Judgment [Entry Date July 14, 2000] Citing Courts Abuse of Discretion and Negligence In Refusing to Identify A RICO Enterprise 18 U.S.C. 1961(4)"

Quote Substantive Claim At page 2 of 60(b)(6) motion

"Extraordinary circumstances are present i.e. the Operational Agreement with the Department of Justice and LIUNA are conspiring to hide an 18 USC 1961(4) enterprise and this Court refuses to "consider" the enterprise element. An abuse of discretion of said omission is an act of negligence causing a grave miscarriage of justice to the plaintiffs"

In addition for purposes of clarifying the pleadings – that were intentionally misrepresented by the district court and affirmed by the circuit. It was very clear, and made clear, that the petitioners did not plead 29 U.S.C. 411 and 29 U.S.C. 501(a) as predicate act

violations of RICO; They were pleaded clearly as Federal statutory rights, extorted by violations of predicate act 18 USC 1951 (Hobbs Act). 29 USC 501(a) was also properly pleaded under predicate acts 18 USC 1341-1343 mail and wire fraud. In addition to the multiple mail and wire fraud averments of petitioners Wall & Cooksey – in one scheme alone regarding petitioner Manos, 740 letters went out stating in its relevant part ---"contrary to Brother Manos wild imagination, there was no assault during the July Executive Board Meeting at Capriccio Restaurant"---

See the Supreme Courts Ruling in Badders v. United States 240 U.S.391 "Congress may enact that each putting of a letter in a post office is a separate offense". Also see (2d Cir) finding in U. S. v. Eskow 422 F. 2d 1060 Finding No. 1. "Each mailing pursuant to an alleged scheme to defraud constitutes separate offense 18 USC 1341". Now see Wall v. Local 230 224 F. 3d 168 Re-Equitable Estoppel "definite misrepresentations of fact" (not brought as mail fraud in 224 F. 3d). Brought as mail and wire fraud in this instant RICO action. Now see 3rd Cir. in United States v. Boffa 688 F.2d 919 "This court held that the RICO predicate act of mail fraud 18 USC 1341 may encompass a scheme to deprive union members of

the right to honest and faithful service of union officials as provided in Section 501 of the LMRDA"

This court can see just in the 18 USC 1341 & 1343 violations alone, in excess of 750 predicate counts a clear "abuse of discretion", "erroneous view of the law" and a clear "erroneous assessment of the evidence". And also, in support of those claims see the transcript of the tape entered in the district and the circuit with the tape. Transcript enter here in Appendix under Subdivision vi. (Petitioner Manos questioning suspicious fund expenditures).

In ending the private attorney general provision as in 1964(c) was designed to fill prosecutorial gaps – this gap is a conspiracy against TheUnited States an **OPEN POLITICAL SECRET**. The cited petitioners are three citizens of the United States harmed by "Enterprise Racketeering Injuries" Quote Sedima Supra At 498 "The statutes remedial purposes are no where more evident than in the provision of a private action for those injured by racketeering activity."

In this case, being denied our right to standing under the "**Any Person**" clause of 18 U.S.C. 1964(c) in spite of the quantity and quality of evidence presented.

Title IX's Liberal Construction / Remedial purposes clause, subsection 904(a) of R.I.C.O. has been totally eliminated here, see footnote No. 10 Relevant part Sedima Supra At 492 "Indeed, if Congress' Liberal-Construction mandate is to be applied anywhere, it is in 1964, where RICO's remedial purposes are most evident".

If this Court decides to grant certiorari, this Court will see that the remedial purposes are most evident not only for the three cited petitioners, but for the United States.

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